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In re Application of :
GAJEWCZYK, Diana M. *et al* :
U.S. Application No.: 09/786,235 :
PCT No.: PCT/CA00/00807 :
Int. Filing Date: 03 September 1999 :
Priority Date: 04 September 1998 :
Attorney Docket No.: 1038-1129 MIS:jb :
For: TREATMENT OF CERVICAL CANCER :

DECISION

This is a decision on the papers submitted by applicants' in the above-captioned application.

BACKGROUND

On 02 March 2001, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, an unexecuted declaration.

On 02 April 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 and Notification of Defective Oath of Declaration (Form PCT/DO/EO/917) indicating that the declaration was not executed in accordance with 37 CFR 1.66 or 37 CFR 1.68. Applicants were given two months to respond with extensions of time available pursuant to 37 CFR 1.136(a). It was also noted that failure to submit an oath or declaration in compliance with 37 CFR 1.497(a) and (b) within the time period set would result in abandonment of the application.

On 29 June 2001, applicants submitted various documents including a declaration signed by seven of the eight co-inventors.

On 20 February 2002, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the declaration submitted was not in compliance with 37 CFR 1.497(a) and (b) because it was not properly executed. Applicants were given a time limit of one month. No extension of this time limit pursuant to 37 CFR 1.136(a) was allowed.

On 20 March 2002, applicants submitted a document titled "Response to Notification of Defective Response" along with copies of documents previously

submitted on 29 June 2001.

On 07 May 2002, applicants submitted the instant petition which was accompanied by, *inter alia*, a "Declaration under 37 C.F.R. 1.47(a)" signed by Michael I. Stewart, a \$130.00 petition fee and extension of time request with a \$400.00 fee.

On 29 July 2002, applicants filed a substitute "Declaration under 37 C.F.R. 1.47(a)" signed by Michael I. Stewart due to an inadvertent error.

DISCUSSION

Applicants were given only one month to provide a proper response to the Notification of Defective Response (Form PCT/DO/EO/916) mailed 20 February 2002. (There was no time remaining in the Notification of Missing Requirements mailed 02 April 2001.)

A proper response would have been a declaration in compliance with 37 CFR 1.497(a) and (b), or an appropriate petition. Instead applicants submitted a letter stating that they were "preparing a Petition under 37 CFR 1.47(a)" and copies of documents previously submitted on 29 June 2001.

This is not considered to a bona fide response to the Form PCT/DO/EO/916.

On 07 May 2002, applicants submitted a petition under 37 CFR 1.47(a) along with an extension of time request which would have been an appropriate reply to the Form PCT/DO/EO/916. Nevertheless, the time limit of the Form PCT/DO/EO/916 had expired and no extension of time was available.

CONCLUSION


For the reasons discussed above, the above-captioned application is hereby **ABANDONED** for failure to properly respond to the Form PCT/DO/EO/916 within the time period set for response.

Since the above-captioned application is abandoned, applicants' petition under 37 CFR 1.47(a) will not be considered at this time. It is noted that applicants would have failed to meet all the requirements outlined in section 409.03(d) of the Manual of Patent Examining Procedure (8th Ed.) if the petition had been considered.

If reconsideration on the merits of this decision is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Applicants may wish to revive the above-captioned application by providing a petition under 37 CFR 1.137(a), or 37 CFR 1.137(b) along with the appropriate fee.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.


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